

areas of public policy, provided that States also adopt a consistent, reasonable national baseline to eliminate obsolete barriers to electronic commerce such as undue paper and pen requirements, and further, that any such innovation should not unduly burden inter-jurisdictional commerce.

(5) To the extent State laws or regulations do not currently provide a consistent, reasonable national baseline or in fact create an undue burden to interstate commerce in the important burgeoning area of electronic commerce, the national interest is best served by Federal preemption to the extent necessary to provide such consistent national baseline and eliminate said burden, but that absent such lack of a consistent, reasonable national baseline or such undue burdens, the best legal system for electronic commerce will result from continuing experimentation by individual jurisdictions.

(6) With due regard to the fundamental need for a consistent national baseline, each jurisdiction that enacts such laws should have the right to determine the need for any exceptions to protect consumers and maintain consistency with existing related bodies of law within a particular jurisdiction.

(7) Industry has developed several electronic signature technologies for use in electronic transactions, and the public policies of the United States should serve to promote a dynamic marketplace within which these technologies can compete. Consistent with this Act, States should permit the use and development of any authentication technologies that are appropriate as practicable as between private parties and in use with State agencies.

SEC. 3. PURPOSE.

The purposes of this Act are—

(1) to permit and encourage the continued expansion of electronic commerce through the operation of free market forces rather than proscriptive governmental mandates and regulations;

(2) to promote public confidence in the validity, integrity and reliability of electronic commerce and online government under Federal law;

(3) to facilitate and promote electronic commerce by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law;

(4) to facilitate the ability of private parties engaged in interstate transactions to agree among themselves on the terms and conditions on which they use and accept electronic signatures and electronic records; and

(5) to promote the development of a consistent national legal infrastructure necessary to support of electronic commerce at the Federal and state levels within existing areas of jurisdiction.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ELECTRONIC.**—The term “electronic” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) **ELECTRONIC RECORD.**—The term “electronic record” means a record created, stored, generated, received, or communicated by electronic means.

(3) **ELECTRONIC SIGNATURE.**—The term “electronic signature” means a signature in electronic form, attached to or logically associated with an electronic record.

(4) **GOVERNMENTAL AGENCY.**—The term “governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or

instrumentality of the Federal government or of a State or of any country, municipality, or other political subdivision of a state.

(5) **RECORD.**—The term “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) **SIGN.**—The term “sign” means to execute or adopt a signature.

(7) **SIGNATURE.**—The term “signature” means any symbol, sound, or process executed or adopted by a person or entity, with intent to authenticate or accept a record.

(8) **TRANSACTION.**—The term “transaction” means an action or set of actions occurring between 2 or more persons relating to the conduct of commerce.

SEC. 5. PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.

(a) **IN GENERAL.**—To the extent practicable, the Federal Government shall observe the following principles in an international context to enable commercial electronic transaction:

(1) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law (UNCITRAL).

(2) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(3) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(4) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

SEC. 6. INTERSTATE CONTRACT CERTAINTY.

(a) **INTERSTATE COMMERCIAL CONTRACTS.**—A contract relating to an interstate transaction shall not be denied legal effect solely because an electronic signature or electronic record was used in its formation.

(b) **METHODS.**—Notwithstanding any rule of law that specifies one or more acceptable or required technologies or business models, including legal or other procedures, necessary to create, use, receive, validate, or invalidate electronic signatures or electronic records, the parties to an interstate transaction may establish by contract, electronically or otherwise, such technologies or business models, including legal or other procedures, to create, use, receive, validate, or invalidate electronic signatures and electronic records.

(c) **NOT PREEMPT STATE LAW.**—Nothing in this section shall be construed to preempt the law of a State that enacts legislation governing electronic transactions that is consistent with subsections (a) and (b). A State that enacts, or has in effect, uniform electronic transactions legislation substantially as reported to State legislatures by the National Conference of Commissioners on Uniform State Law shall be deemed to have satisfied this criterion, provided such legislation as enacted is not inconsistent with subsections (a) and (b).

(d) **INTENT.**—The intent of a person to execute or adopt an electronic signature shall be determined from the context and surrounding circumstances, which may include accepted commercial practices.

SEC. 7. STUDY OF LEGAL AND REGULATORY BARRIERS TO ELECTRONIC COMMERCE.

(a) **BARRIERS.**—Each Federal agency shall, not later than 6 months after the date of en-

actment of this Act, provide a report to the Director of the Office of Management and Budget and the Secretary of Commerce identifying any provision of law administered by such agency, or any regulations issued by such agency and in effect on the date of enactment of this Act, that may impose a barrier to electronic transactions, or otherwise to the conduct of commerce online or be electronic means. Such barriers include, but are not limited to, barriers imposed by a law or regulation directly or indirectly requiring that signatures, or records of transactions, be accomplished or retained in other than electronic form. In its report, each agency shall identify the barriers among those identified whose removal would require legislative action, and shall indicate agency plans to undertake regulatory action to remove such barriers among those identified as are caused by regulations issued by the agency.

(b) **REPORT TO CONGRESS.**—The Secretary of Commerce, in consultation with the Director of the Office of Management and Budget, shall, within 18 months after the date of enactment of this Act, and after the consultation required by subsection (c) of this section, report to the Congress concerning—

(1) legislation needed to remove any existing barriers to electronic transactions or otherwise to the conduct of commerce online or by electronic means; and

(2) actions being taken by the Executive Branch and individual Federal agencies to remove such barriers as are caused by agency regulations or policies.

(c) **CONSULTATION.**—In preparing the report required by this section, the Secretary of Commerce shall consult with the General Services Administration, the National Archives and Records Administration, and the Attorney General concerning matters involving the authenticity of records, their storage and retention, and their usability for law enforcement purposes.

(d) **INCLUDE FINDINGS IF NO RECOMMENDATIONS.**—If the report required by this section omits recommendations for actions needed to fully remove identified barriers to electronic transactions or to online or electronic commerce, it shall include a finding or findings, including substantial reasons therefor, that such removal is impracticable or would be inconsistent with the implementation or enforcement of applicable laws.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate, on March 31, 1999,